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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

2006 APR 28 P 1:59

AZ CORP COMMISSION
DOCUMENT CONTROL

JEFF HATCH-MILLER, Chairman
WILLIAM A. MUNDELL
MARC SPITZER
MIKE GLEASON
KRISTIN K. MAYES

IN THE MATTER OF THE FORMAL
COMPLAINT AND REQUEST FOR
DECLARATORY JUDGMENT OF PAC-WEST
TELECOMM, INC. AGAINST QWEST
CORPORATION.

DOCKET NO. T-03693A-05-0875
DOCKET NO. T-01051B-05-0875

PROCEDURAL ORDER

BY THE COMMISSION:

On December 6, 2005, Pac-West Telecomm, Inc. ("Pac-West") filed with the Arizona Corporation Commission ("Commission") a complaint against Qwest Corporation ("Qwest"). In that complaint, Pac-West requested an expedited procedural order or procedural conference.

On December 14, 2005, a procedural conference was held pursuant to Procedural Order issued on December 12, 2005.

At the procedural conference, Qwest's counsel stipulated on behalf of Qwest that it will not disconnect Pac-West's service while the matter is before the Commission. The parties further agreed that another procedural conference should be held after the parties submit a joint statement of stipulated facts.

On December 14, 2005, by Procedural Order, the parties were ordered to file a Joint Stipulation of Facts by January 25, 2006. A procedural conference was also scheduled for January 30, 2006.

On January 25, 2006, the parties filed a Joint Motion to Extend Time to File Joint Stipulation of Facts until further notice.

On January 26, 2006, by Procedural Order, the parties were granted an extension of time to file the Joint Stipulation of Facts.

On January 30, 2006, a procedural conference was held as scheduled. The parties agreed to continue developing a Joint Stipulation of Facts and agreed to also develop a Joint Statement of Issues.

1 On March 1, 2006, a procedural conference was held pursuant to Procedural Order issued on
2 January 30, 2006. Pac-West stated that it believes the matter is ready to move forward with a
3 briefing schedule and that the matter should be decided without a hearing, solely on the basis of legal
4 arguments. Qwest stated that it wished to file an amended Answer in the matter. Qwest also
5 requested additional time for discovery relating to which circuits carry Virtual NXX traffic and which
6 carry Internet Service Provider bound traffic. Qwest stated that after discovery is complete, it may
7 request an evidentiary hearing rather than proceeding solely on the basis of legal arguments made by
8 the parties.

9 On March 1, 2006, a procedural order was issued with discovery deadlines and setting a
10 procedural conference for April 20, 2006, at 10:00 a.m.

11 On March 20, 2006, Qwest filed its Amended Answer to Complaint.

12 On April 11, 2006, Pac-West filed its Motion for Leave to File First Amended Complaint for
13 Declaratory Judgment and Qwest filed its Motion to Compel Response to Data Requests.

14 On April 20, 2006, the parties filed a Joint Stipulation to postpone the procedural conference
15 scheduled for April 20, 2006, until April 27, 2006, and Pac-West filed its Response to Qwest
16 Corporation's Motion to Compel Response to Data Requests.

17 On April 27, 2006, a procedural conference took place pursuant to Procedural Order issued on
18 April 21, 2006. At the procedural conference, numerous issues were raised, including issues related
19 to VNXX; what amount of money does Pac-West believe is in controversy in this docket; and the
20 need for additional discovery.

21 Consistent with Ariz. R. Civ. P. 37(a)(2)(C), the parties should attempt to resolve discovery
22 disputes among themselves prior to filing future motions to compel, and have agreed to do so on the
23 record at the April 27, 2006 procedural conference, and therefore we will deny Qwest's Motion to
24 Compel Response to Data Request.

25 Further, Pac-West should make a reasonable effort to identify the amount of money in
26 controversy prior to the next scheduled procedural conference.

27 IT IS THEREFORE ORDERED that Qwest's Motion to Compel Response to Data Request
28 shall be, and hereby is, denied.

1 IT IS FURTHER ORDERED that Pac-West's Motion for Leave to File First Amended
2 Complaint for Declaratory Judgment shall be, and hereby is, granted.

3 IT IS FURTHER ORDERED that Qwest's second amended Answer shall be filed with
4 Docket Control no later than May 11, 2006.

5 IT IS FURTHER ORDERED that the parties' request for an additional period for discovery
6 shall be granted.

7 IT IS FURTHER ORDERED that discovery shall be as permitted by law and the rules and
8 regulations of the Commission, except that: until June 2, 2006 any objection to discovery requests
9 shall be made within 7 days¹ of receipt and responses to discovery requests shall be made within 10
10 days of receipt; thereafter, objections to discovery requests shall be made within 5 days and responses
11 shall be made within 7 days of receipt. The response time may be extended by mutual agreement of
12 the parties involved if the request requires an extensive compilation effort. No discovery requests
13 shall be served after June 16, 2006.

14 IT IS FURTHER ORDERED that, in the alternative to filing a written motion to compel
15 discovery, any party seeking discovery may telephonically contact the Commission's Hearing
16 Division to request a date for a procedural hearing to resolve the discovery dispute; that upon such a
17 request, a procedural hearing will be convened as soon as practicable; and that the party making such
18 a request shall contact all other parties to advise them of the hearing date and shall at the procedural
19 hearing provide a statement confirming that the other parties were contacted.²

20 IT IS FURTHER ORDERED that a **procedural conference** shall be scheduled on **June 7,**
21 **2006 at 10:00 a.m.** for the purpose of determining how to proceed after the completion of discovery.

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23 ...

24 ...

25 ...


26 ...

27 ¹ "Days" means calendar days.

28 ² The parties are encouraged to attempt to settle discovery disputes through informal, good-faith negotiations before seeking Commission resolution of the controversy.

1 IT IS FURTHER ORDERED that the Presiding Officer may rescind, alter, amend, or waive
2 any portion of this Procedural Order either by subsequent Procedural Order or by ruling at hearing.

3 Dated this 28 day of April, 2006

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6 
7 AMY BJELLAND
ADMINISTRATIVE LAW JUDGE

8 Copies of the foregoing mailed/delivered
this 28 day of April, 2006 to:

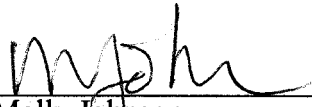
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26
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